

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**COMMODITY FUTURES TRADING
COMMISSION,**

Plaintiff,

v.

**MICHAEL JAMES KONKEL,
individually and d/b/a VENTURE
FUND, ICE CAPITAL
MANAGEMENT, INC., AD ASTRA,
INC., and the INScape FUNDS,**

Defendant.

CIVIL ACTION NO.

00-T-547-S

**CONSENT ORDER OF PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF AGAINST
DEFENDANT MICHAEL J. KONKEL**

I

INTRODUCTION

1. On May 1, 2000, plaintiff Commodity Futures Trading Commission ("Commission") filed a complaint against defendant Michael James Konkell ("Konkel"), individually and d/b/a Venture Fund, Ice Capital Management, Inc., Ad Astra Inc., and the Inscape Funds, alleging violations of the Commodity Exchange Act ("Act"), as amended, 7 U.S.C. §§ 1 *et seq.* (1994), and the regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (1999). On July 10, 2000, this Court entered a *Consent Order of Preliminary Injunction And Other Equitable Relief* ("Preliminary Injunction") against Konkel.

2. To effect settlement of this action prior to a trial on the merits or further judicial proceedings, Konkel consents to this *Consent Order Of Permanent Injunction And Other Equitable Relief Against Defendant Michael James Konkell* ("Order"). Konkel also:

(1) acknowledges service upon him of the summons and complaint in this action; (2) admits this

Court's personal and subject matter jurisdiction over him and this action; (3) admits that venue properly lies with this Court; and (4) waives the entry of findings of fact and conclusions of law in this action pursuant to Fed. R. Civ. P. 52, except as provided in Part II below.

3. By consenting to the entry of this Order, Konkell neither admits nor denies the allegations of the Commission's complaint or the Findings contained in Part II of this Order, except as to jurisdiction and venue. However, Konkell agrees and the parties to this Order intend that the allegations of the Commission's complaint and all of the Findings of Fact made by this Court and contained in Part II of this Order shall be taken as true and correct and be given preclusive effect without further proof only for the purposes of any subsequent bankruptcy proceeding filed by, on behalf of, or against Konkell for the purpose of determining whether his restitution obligation and/or other payments ordered herein are excepted from discharge. Konkell also shall provide immediate notice of any bankruptcy proceeding filed by, on behalf of, or against him in the manner required by Part V, paragraph 1 of this Order.

4. Konkell agrees that: (1) he will not take any action or make or permit to be made any public statement denying, directly or indirectly, any finding or conclusion contained in this Order or creating, or tending to create, the impression that this Order is without a factual basis; and (2) no agent or employee of Konkell acting under his authority or control shall take any action or make or permit to be made any public statement denying, directly or indirectly, any of the findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without factual basis, and Konkell shall undertake all steps necessary to assure that all of his agents and employees understand and comply with this agreement. Nothing in this provision affects Konkell's: (1) testimonial obligations; or (2) right to take legal positions in other proceedings to which the Commission is not a party.

5. Konkel waives: (1) all claims that he may possess under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 and 28 U.S.C. § 2412, as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63, and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 *et seq.*, relating to or arising from this action and any right under EAJA to seek costs, fees, and other expenses relating to or arising from this proceeding; (2) any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and (3) all rights of appeal from this Order.

6. Konkel consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for any other purposes relevant to this action.

7. Konkel affirms that he has read this Order and agrees to this Order voluntarily, and that no promise or threat of any kind has been made by the Commission or any member, officer, agent, or representative thereof, or by any other person, to induce his consent to this Order, other than as set forth specifically herein.

8. This Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. This Court therefore directs the entry of Findings of Fact and a permanent injunction and other equitable relief, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein.

II

FINDINGS OF FACT

1. Konkel resides at 3255 County Highway F, Barneveld, Wisconsin 53507. From January 22, 1999 through December 15, 1999, Konkel was registered as an AP of World Capital Brokerage Services, Inc. ("WCBS"), a Tampa, Florida registered IB guaranteed by Iowa Grain.

Konkel was manager and the sole AP of a WCBS branch office located at his home in Barneveld, Wisconsin. Prior to his affiliation with WCBS, Konkel was registered from October 1996 through February 1999 as an AP of Commodity Programs, Inc. (“CPI”), an IB located in Tampa, Florida. From at least 1996 through 1999, Konkel also did business as “the Venture Fund,” “ICE Capital Management, Inc.,” “Ad Astra Inc.” (“Ad Astra”), and “the Inscape Funds,” none of which has ever been registered with the Commission in any capacity.

2. From 1996 through the filing of the complaint, Konkel fraudulently solicited at least 20 individuals in Alabama and elsewhere to invest over \$870,000 in an investment scheme called Ice Capital Management (“Ice Capital”) that he operated and controlled. Konkel was not registered as a commodity pool operator (“CPO”). Konkel authored and provided to investors in Ice Capital promotional material which stated that a portion of the fund’s assets would be placed in “the trading system and strategy recommended by CPI.” During this time, Konkel was working for CPI as an associated person (“AP”) and branch office manager.

3. Subsequent versions of the promotional material authored and distributed by Konkel also set forth the names and logos of two corporations and one limited partnership controlled by Konkel: Ice Capital, Ad Astra, Inc. (“Ad Astra”) and the Inscape Funds, none of which has ever been registered with the Commission in any capacity. Konkel incorporated Ice Capital and Ad Astra, and formed the Inscape Funds as a limited partnership only as recently as November 1999. For most of the relevant time period, he operated this investment scheme in his own name, and did business using the names of the as yet unformed corporations and partnerships.

A. Konkel's False Solicitations

4. While Konkel was working at CPI, he decided to form an “investment company” that would function as an introducing broker, a broker/dealer, a commodity pool and commodity trading advisor, and offer publicly traded mutual funds as well. Konkel convinced a close friend who resided in Alabama to invest an initial \$40,000. Thereafter this friend introduced Konkel to a resident of Abbeville, Alabama. This individual and his wife invested \$335,000 with Konkel. Through these two investors, Konkel obtained at least 18 other investors from the Abbeville area, who each invested sums in Ice Capital ranging from \$1,000 to \$335,000. Most of the individuals who invested funds with Konkel were either relatives or friends of the Abbeville resident who introduced them to Konkel.

5. Konkel solicited funds for his pooled investment scheme in various ways. On occasion, he met with investors, either individually or in a group setting. He also spoke to investors and prospective investors on the telephone, and he provided promotional materials to investors and prospective investors. On at least one occasion, Konkel provided prospective investors with a tour of the CPI offices in Tampa, Florida.

6. Konkel promised investors that they would receive monthly profit checks and regular account statements detailing the status of their investments. According to promotional material that Konkel provided to prospects and investors, approximately 35% of the investor's funds were to be traded according to the “seasonal recommendations of CPI,” which “increased the winning trade percentage to consistently above 90%” and for which “profitability increased to over a 200% annualized gain.” The promotional material went on to claim that the remaining portions of the investor's funds would be traded in “mutual funds,” “some type of fixed investment,” and “loaned to CPI ... [with] a 15% to 20% annual interest rate.”

7. When individuals decided to participate in Konkel's investment scheme, they were directed to write out checks to "the Venture Fund," which Konkel told customers was another name for Ice Capital Management. In fact, Konkel maintained a personal bank account at a Madison, Wisconsin credit union under the name "Michael James Konkel d/b/a Venture Fund." Konkel deposited the customer checks payable to "the Venture Fund" into this personal checking account. He then typically transferred the investor's funds to another checking account in his name at the same Wisconsin credit union.

8. From Konkel's second personal checking account, he then transferred approximately \$270,000 in investor funds to commodity futures trading accounts in his name either at LIT Division of First Options or Iowa Grain Co., and approximately \$200,000 in investor funds to two securities accounts at Bear Stearns & Co., Inc. ("Bear Stearns"). One of these securities accounts is held in Konkel's name, and another is held jointly in the name of Konkel and his fiancée.

B. False Reports of Profitability and Repayments

9. Konkel falsely represented to investors in form letters that their investments were performing well. For instance, in one letter dated October 9, 1999, Konkel stated that "our accounts the last 3 months have performed 7, 12 and 2 percent increases [sic] respectively." For the precise time period that the letter referred to, however, Konkel was incurring trading losses in his Iowa Grain commodity futures trading account in two out of the three months. Konkel therefore misled investors about the status and performance of their investments.

10. Konkel also misled investors about how and when they would be repaid. His agreement with investors called for the return of all capital within two years. While some

investors have received monies back, certain investors have not received any money back from him despite Konkel's repeated promises that they would receive their funds back.

III

PERMANENT INJUNCTION

A. **IT IS HEREBY ORDERED** that defendant Konkel, along with any officer, agent, servant, employee and attorney, or person in active concert or participation with him who receives actual notice of this Order by personal service or otherwise, is permanently enjoined and restrained from directly or indirectly:

1. violating Section 4b(a)(i) - (iii), 7 U.S.C. § 6b(a)(i)-(iii), by, in or in connection with any order to make, or the making of any contract of sale of any commodity for future delivery (including but not limited to foreign currencies), made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (B) determining the price basis of any transaction in interstate commodity in such commodity, or (C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

cheating or defrauding or attempting to cheat or defraud other persons; or willfully making or causing to be made to other persons false reports or statements thereof, or willfully entering or causing to be entered for other persons false reports thereof; or willfully deceiving or attempting to deceive other persons;
2. violating Section 4o(1) of the Act, 7 U.S.C. § 6o(1), by acting as a commodity pool operator, and by use of the mails or other instrumentalities of interstate commerce, directly or indirectly, employing devices, schemes or artifices to defraud customers, or engaging in transactions, practices, or a course of business conduct which operate as a fraud or deceit upon customers;
3. violating Section 4.41(a) of the Regulations, 17 C.F.R. § 4.41(a) (2000), by advertising in a manner which: (1) employs a device, scheme or artifice to defraud participants or clients or prospective participants or clients; or (2) involves any transaction, practice or course of business which operates as a fraud or deceit upon participants or clients or prospective participants or clients;
4. violating Section 4m(1) of the Act, 7 U.S.C. § 6m(1), by operating a commodity pool without being registered with the Commission;

5. violating § 4.22 of the Regulations, 17 C.F.R. § 4.22, by failing to distribute to each pool participant an Account Statement and Annual Report setting forth the information contained in § 4.22 of the Regulations, 17 C.F.R. § 4.22;
6. violating Section 4.20(c) of the Regulations, 17 C.F.R. § 4.20(c), by commingling the property of pool participants with his property;
7. violating § 4.21(a) of the Regulations, 17 C.F.R. § 4.21(a), by failing to deliver or cause to be delivered to any prospective participant a Disclosure Document for the pool setting forth the information contained in § 4.24 of the Regulations, 17 C.F.R. § 4.24, or violating § 4.21(b) of the Regulations, 17 C.F.R. § 4.21(b), by failing to receive from the prospective participant a signed acknowledgement stating that the prospective participant received a Disclosure Document for the pool; and
8. The injunctive provisions of this Order shall be binding upon Konkel, any person insofar as he or she is acting in the capacity of officer, agent, servant, or attorney of Konkel, and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in active concert or participation with Konkel.

B. IT IS FURTHER ORDERED THAT:

Konkel and any person insofar as he or she is acting in the capacity of officer, agent, servant, employee, or attorney of Konkel, and persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are permanently enjoined, restrained, and prohibited from:

1. trading on or subject to the rules of any registered entity as that term is defined by Section 1(a)(29) of the Act, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. No. 106-554, 114 Stat. 2763, 7 U.S.C. § 1(a)(29);
2. engaging in, controlling, or directing the trading for any commodity interest account on or behalf of any other person or entity, whether by power of attorney or otherwise; and
3. applying for registration or seeking exemption from registration, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2000), with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration, except as provided for in Regulation

4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2000), or acting as an agent or officer of any person registered, exempted from registration, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2000), or required to be registered with the Commission. This includes, but is not limited to, soliciting, accepting, or receiving any funds, revenue, or other property from any person, giving advice for compensation, or soliciting prospective customers, related to the purchase or sale of any commodity futures or options on commodity futures contracts.

IV

ORDER FOR PAYMENT OF RESTITUTION AND CONTINGENT CIVIL MONETARY PENALTIES

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT:

1. Plaintiff is awarded judgment against Defendant Konkel for restitution of customer funds in the amount of \$ 790,882.01 (“Restitution Obligation”), which includes a principal amount of \$739,731.25 plus prejudgment interest in the amount of \$51,150.76 as of April 5, 2001. Post-judgment interest shall accrue on the Restitution Obligation at the rate provided for by 28 U.S.C. § 1961.

2. The persons to whom restitution shall be made (“Investors”) are identified in the List of Investors filed under seal by Order of this Court concurrently herewith and incorporated herein by reference as Exhibit A, which includes the names and last known addresses of the Fund participants who are owed restitution identified to date. Exhibit A includes the Commission’s calculation of the total amount of restitution owed each investor, based in part upon information provided and representations made by Konkel to the Commission pursuant to the accounting provisions set forth in this Court’s July 10, 2000 *Preliminary Injunction*. Omission from Exhibit A shall in no way limit the ability of any Fund investor from seeking recovery from Konkel or any other person or entity. Further, the amounts contained in Exhibit A shall not limit the ability of any Fund investor from proving that a greater amount is owed from Konkel or any other

person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any Fund Investor that exist under state or common law.

3. The National Futures Association shall be designated as Monitor ("Monitor") for the period beginning with the date of entry of this Order and continuing until distribution of the last payment called for by this Order.

4. Upon the entry of this Order, the provisions of the Court's July 10, 2000 Consent Order of Preliminary Injunction and Other Equitable Relief entered against Defendant Konkel, imposing a modified freeze on his assets, shall no longer be in effect. Financial institutions and other entities holding frozen funds or other property previously controlled by Defendant Konkel shall tender same to the Monitor within ten (10) calendar days after being served with copies of this Order after entry by the Court. The Monitor shall hold all such funds transferred by any financial institution pursuant to this paragraph in an interest-bearing account, and any such funds shall be distributed to Investors in accordance with the plan of distribution to be submitted by the Commission, when approved by this Court.

5. Defendant Konkel shall pay the Restitution Obligation as follows: an annual payment to an account designated by the Monitor on or before September 1 of each calendar year (the "Annual Payment"), beginning in calendar year 2001 and continuing for ten years thereafter. At the end of the ten-year payment period, Defendant's only remaining restitution obligation shall be pursuant to Part IV, paragraph 1. The amount of Defendant's Annual Payment shall consist of a portion of: (1) his adjusted gross income (as defined by the Internal Revenue Code) earned or received by Defendant during the preceding calendar year, plus (2) all other net cash receipts, net

cash entitlements or net proceeds of non-cash assets received by Defendant during the preceding calendar year. The Annual Payment will be determined as follows:

Total Adjusted Gross Income plus Net Cash Receipts:	Percent of Total to be Paid by Defendant:
\$0 -- \$25,000	0%
\$25,000--\$50,000	20% of the amount above \$25,000
\$50,000 -- \$100,000	20% of the amount between \$25,000 and \$50,000 plus 30% of the amount between \$50,000 and 100,000
\$100,000 and up	20% of the amount between \$25,000 and \$50,000 plus 30% of the amount between \$50,000 and \$100,000 plus 40% of the amount above \$100,000

6. Such funds shall be distributed as restitution payments to the Investors in the amounts calculated by the Monitor unless, at its sole discretion, based upon the amount of funds available for distribution, the Monitor decides to defer distribution. If, at the end of the ten-year period, any part of the Annual Payments has not been distributed, the Monitor shall either distribute the funds in the account or make a recommendation to the Commission that the funds instead become a civil monetary penalty pursuant to Section 6(c) of the Act. In the event the Commission rejects the Monitor's recommendation, the funds shall be distributed as restitution.

7. Defendant shall provide to the Monitor complete copies of his signed income tax returns filed with the Internal Revenue Service ("**IRS**"), all IRS 1099 forms, and all other schedules and attachments (e.g., IRS Form W-2), as well as any filings he is required to submit to any state tax or revenue authority, on or before June 30 of each calendar year, commencing with June 30, 2001 and ending on June 30, 2011. If, during the same time period, Konkel elects to file

a joint tax return, he shall provide all documents called for by this Paragraph 7, including the signed and filed joint tax return, plus a draft individual tax return prepared on IRS Form 1040 containing a certification by a licensed certified public accountant that the "Income" section (currently lines 7-22 of Form 1040) truly, accurately and completely reflects all of the Konkel's income, that the "Adjusted Gross Income" section truly, accurately and completely identifies all deductions that Konkel has a right to claim, and that the deductions contained in the "Adjusted Gross Income" section are equal to or less than 50% of the deductions that Konkel is entitled to claim on the joint tax return; provided, however that Konkel may claim 100% of the deductions contained in the "Adjusted Gross Income" section that are solely his. Such individual tax return shall include all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099, as well as any filings required to be submitted to any state tax or revenue authority. If Defendant does not file a return, he shall provide his sworn financial statement on June 30 and December 31 of each calendar year, starting on December 31, 2000 and continuing through and including June 30, 2011. The financial statements shall provide:

- a . A true and complete itemization of all of Defendant's rights, title and interest (or claimed in) any asset, wherever, however and by whomever held;
- b. An itemization, description and explanation of all transfers of assets with a value of \$1,000 or more made by or on behalf of Defendant over the preceding six-month interval; and
- c. A detailed description of the source and amount of all of Defendant's income or earnings, however generated.

8. Based on the information contained in Defendant's tax returns (and, to the extent they are provided, his sworn financial statements) and further instructions to be issued by this Court regarding the method of calculating distribution of any funds to Fund Investors, the Monitor shall calculate the Annual Payment to be paid by Defendant for that year and the specific

amounts payable to each of the Investors. On or before July 31 of each year, the Monitor shall send written notice to Defendant with instructions to immediately pay the Annual Payment to the Monitor.

9. Collateral Agreements: Konkell shall immediately notify the Commission and the Monitor if he makes or has previously made any agreement with any Fund Investor obligating any payments to that Investor outside of the plan set forth in this Order. Konkell shall also provide immediate evidence of any such agreement, and evidence of any payments made pursuant to such agreements, in the manner required by Part V, paragraph 1.

10. Defendant Konkell shall pay a contingent civil monetary penalty in an amount of up to four hundred forty thousand dollars (\$440,000), commencing upon his fulfillment of his Restitution Obligation as set forth in Paragraph 5 above.

11. Defendant shall pay the contingent civil monetary penalty in annual installment payments ("Annual CMP Payment") following his satisfaction of his Restitution Obligation, and continuing until September 1, 2011 (or until the full civil monetary penalty is paid in full, if that happens first). The Annual CMP Payment shall be calculated by the Monitor in accordance with the payment schedule set forth in Paragraph 5 above. After satisfaction of the Restitution Obligation, should funds remain that same year pursuant to the restitution payment schedule, such funds shall immediately be paid as part of the civil monetary penalty payment. Defendant shall make each such Annual CMP Payment by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Defendant and

the name and docket number of the proceeding; Defendant shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor, and to the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, NW, Washington, D.C. 20581.

12. Defendant shall cooperate fully with the Monitor and the Commission in explaining Defendant's financial income and earnings, status of assets, financial statements, asset transfers and tax returns, and shall provide such additional information and documents with respect thereto as may be requested by the Monitor or the Commission. Defendant shall also cooperate fully and expeditiously with the Monitor and the Commission in carrying out all other aspects of his obligations described in this Order.

13. Defendant shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any member of his family or any other person for the purpose of concealing such funds or property from the Court, the Monitor or the Commission.

14. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each Investor is explicitly deemed an intended third-party beneficiary of this Order, such that each Investor may seek to enforce any part of Defendant's Restitution Obligation imposed by the Order that is not satisfied at the end of the operation of the ten-year payment plan set forth in Paragraphs 1 through 8, to ensure continued compliance with any provision of this Order and to hold Defendant in contempt for past violations of any provision of this Order.

15. Default: Any failure by the Defendant to carry out any of the terms, conditions or obligations under any paragraph of this Order shall constitute an Event of Default. If any Event of Default occurs, the Commission (or its designee) shall be entitled to:

- a. an order requiring immediate payment of any unpaid Annual Restitution Payments and/or CMP Payments, or, at the Commission's option, the entire unpaid balance, or any unpaid portion, of the restitution amount and/or civil monetary penalty set forth above in paragraphs 1 through 11 above; and/or
- b. move the Court for imposition of all other available remedies, including, but not limited to, an order holding Defendant in contempt for violation of this Order.

16. Upon the occurrence of an Event of Default based upon a claim or cause of action that Defendant failed to make any Annual Restitution Payments and/or Annual CMP Payments when due, defendant will be barred from asserting any defense, including expiration of any statute of limitations, waiver, estoppel or laches, where such defense is based on the alleged failure of the Commission to pursue such claims or causes of action during the pendency of this civil action, during the negotiation of the Defendant's Consent to this Order or while this Order remains in effect. The only issue that Defendant may raise in defense is whether he has made the Annual Restitution Payments and/or Annual CMP Payments as directed by the Monitor. Any motion by the Commission for entry of an order pursuant to this paragraph requiring payment of less than the full amount of the Restitution Obligation and/or civil monetary penalty, set forth in paragraphs 1 through 11 above, or any acceptance by the Commission of partial payment of the Annual Restitution Payments and/or Annual CMP Payments made by the Defendant, shall not be deemed a waiver of the Commission's right to require Defendant to make further payments pursuant to the payment plans set forth above, or, in the event of a further Event of Default, a waiver of the Commission's right to require immediate payment of the entire remaining balance, or any unpaid portion, of the Restitution Obligation and/or civil monetary penalty set forth in paragraphs 1 through 11 above.

17. Based upon Defendant's sworn representations in his Financial Disclosure Statement and other evidence provided by Defendant to the Commission regarding his financial

condition, the Court is not ordering payment of restitution and a civil monetary penalty, other than as required by paragraphs 1 through 11 above. This determination is contingent upon the accuracy and completeness of Defendant's Financial Disclosure Statement, other evidence provided by Defendant regarding his financial condition, and Defendant's accounting of Fund Investor monies. If at any time following the entry of this Order, the Commission obtains information indicating that Defendant's representations to the Commission concerning his financial condition or accounting were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may move this Court for an order requiring Defendant to make immediate payment of his entire Restitution Obligation and/or civil monetary penalty, or of any portion thereof, the amount of which shall be determined by the Commission. In connection with any such motion, the only issues shall be whether the financial information provided by Defendant was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made. In its motion, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or transfer assets or directing the forfeiture of any assets, and the Commission may also request additional discovery. Defendant may not, by way of defense to such motion, challenge the validity of their Consent or this Order, or contest any of the findings of fact or conclusions of law set forth in this Order, assert that payment of restitution and/or a civil monetary penalty should not be ordered, or contest the amount of the restitution or civil monetary penalty to be paid. If in such motion, the Commission moves for, and the Court orders, payment of less than the full amount of the Restitution Obligation or the full amount of civil monetary penalty, such motion will not be deemed a waiver of the Commission's right to require Defendant to make further payment pursuant to the payment plans set forth above.

V

OTHER PROVISIONS

IT IS FURTHER ORDERED THAT:

1. Notices: All notices required by this Order shall be sent by certified mail, return receipt requested, as follows:

a. Notice to Commission:

Director, Division of Enforcement
Commodity Futures Trading Commission
1155 21st St. NW
Washington, DC 20581

b. Notice to Monitor:

Vice President, Compliance
National Futures Association
200 West Madison Street
Chicago, IL 60606

c. Notice to defendant Konkel:

Michael James Konkel
3255 County Highway F
Barneveld, Wisconsin 53507

In the event that Konkel changes his residential or business telephone number(s) and/or address(es) at any time, he shall provide written notice of the new number(s) and/or address(es) to the Monitor and to the Commission within ten (10) calendar days thereof.

2. Entire Agreement and Amendments: This Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

3. Waiver: The failure of any party hereto or of any Fund Investor at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Order.

4. Successors and Assigns: This Order shall inure to the benefit of and be binding upon the successors, assigns, heirs, beneficiaries, and administrators of the parties hereto.

5. Acknowledgements: Upon being served with copies of this Order after entry by this Court, Konkel shall sign an acknowledgment of such service and serve such acknowledgment on this Court and the Commission within seven (7) calendar days.

Upon being served with copies of this Order after entry by the Court, the Commission shall serve a copy of the Order upon the Monitor and all persons identified in Exhibit A within seven (7) calendar days.

6. Invalidation: If any provision of this Order, or the application of any provisions or circumstances is held invalid, the remainder of this Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

7. Jurisdiction of this Court: This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

Done and ordered this _____ day of _____ 2001, at Montgomery, Alabama.

Myron H. Thompson
UNITED STATES DISTRICT JUDGE

**Consented to and
approved for entry by:**

Michael James Konkel
Dated: _____, 2001

Reviewed and approved by:

Thomas G. Halloran, Esq.
Attorney for defendant Michael
James Konkel
Dated: _____, 2001

Reviewed and approved by:

Peter M. Haas, Esq.
Attorney for Plaintiff, Commodity Futures Trading Commission
Dated: _____, 2001